

REMARKS

Claims 1-27 and 29-48 were pending in this application. Claims 31-32 and 35-46 were previously withdrawn and claim 28 was cancelled. Claims 8-9 and 23-27 are herein withdrawn and claims 1, 8, 9 and 18 are herein amended. *No new matter has been added.*

Applicant reserves the right to pursue the claims as originally filed, or similar claims, in this or one or more subsequent patent applications.

Rejection of claims 1-7, 10-22, 29-30, 33-34, and 47-48 under 35 USC § 103(a)

Claims 1-7, 10-22, 29-30, 33-34, and 47-48 are rejected under 35 USC § 103(a) in view of WO 2004/026843 (D4). It is asserted by the Examiner that formula (I) of D4 encompasses compounds generically claimed in the instant claims when R₅ is XR₆, wherein X is CO and R₆ is aryl, aryl-(C₁₋₆ hydroxyalkyl), heteroaryl-(C₁₋₆ hydroxyalkyl), or heterocyclyl-(C₁₋₆ hydroxyalkyl). Applicant respectfully disagrees. However, for the purpose of expediting prosecution, claim 1 is herein amended to remove C₁₋₆ hydroxyalkyl as a possible substituent for the aryl, heteroaryl or heterocyclyl groups that define R⁵.

At least in view of the above amendments, Applicant respectfully submits that the instant claims are nonobvious over D4 because D4 does not “encompass compounds generically claimed in the instant claims.” As amended, R⁵ now represents, in part, an aryl, heteroaryl, or heterocyclyl that is substituted by -(C₁₋₄ alkyl)-X₁-(C₁₋₄ alkyl)-X₂-(C₁₋₄ alkyl). By contrast, R₆ of D4, which corresponds to R⁵ of the present application, has no such substituent requirement. Accordingly, D4 does not teach or suggest the compounds claimed in the instant claims and therefore a prima facie case of obviousness has not been established.

In view of the above amendments and arguments, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Double Patenting Rejection over 10/593,382 or 10/593,666

The Examiner has rejected claims 1-7, 10-22, 29-30, 33-34 and 47-48 on the grounds of obviousness-type double patenting over United States Patent Application Nos. 10/593,382 or 10/593,666. In particular, the Examiner is of the opinion that

[a]lthough the instant claims do not recite an RSV fusion protein which is recited in the claims of the ‘382 and the ‘666 applications, the instant claims

recite the open language “comprising,” which does not exclude additional unrecited elements.

Applicants respectfully submit that when the pending claims in the present application are indicated as otherwise allowable, Applicants will consider submitting, if appropriate, a terminal disclaimer complying with 37 C.F.R. §1.321 (b) and (c) which will obviate this rejection. The proposed filing of this terminal disclaimer should in no way be construed as an acquiescence to the Examiner’s rejection and will be done solely to expedite the prosecution of the application.

Double Patenting Rejection over 10/528,250 (371 application of D4)

Claims 1-7, 10-22, 29-30, 33-34 and 47-48 are rejected on the grounds of obviousness-type double patenting over the 371 application of D4.

In view of the amendments made above in claim 1, Applicant respectfully submits that the instant claims remain non-obvious over D4 and likewise over the 371 application of D4.

In view of the above amendments and arguments, Applicant believes the pending application is in condition for allowance.

CONCLUSION

Applicant believes that no additional fees are due. However, if any additional fees are due, please charge our Deposit Account No. 504876, under Order No. 117750-01901, from which the undersigned is authorized to draw.

If a telephone conversation with Applicant's agent would help expedite the prosecution of the above-identified application, the Examiner is urged to call the undersigned at (617) 449-6500.

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Respectfully submitted,

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